

LAW OFFICES OF
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ADMITTED TO PRACTICE LAW
IN CALIFORNIA, DISTRICT OF COLUMBIA,
AND LOUISIANA ONLY

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NOV 12 1993

November 12, 1992

BY HAND

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

William Caton, Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

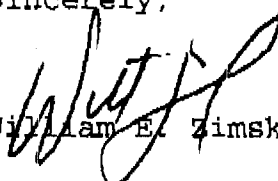
Re: IVDS Applications

Dear Mr. Caton:

Enclosed please find one facsimile original and nine copies of a Motion for Leave to File Comments One Day Late with respect to the NPRM in PP Docket 93-253.

If the staff should have any questions regarding this matter, please contact me.

Sincerely,


William E. Zimsky

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:

Implementation of Section 309(j)
of the Communications Act
Competitive Bidding

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) PP Docket 93-253
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TO: The Commission

MOTION FOR LEAVE TO FILE COMMENTS
ONE DAY LATE

The Law Offices of William E. Zimsky ("Zimsky") hereby respectfully requests leave to file his comments in response to the Notice of Proposed Rule Making, FCC 93-455, released October 12, 1993, one day late. Comments were due on Wednesday, November 10. Zimsky requests leave to file his Comments one business day late, on Friday, November 12.¹ (Thursday, November 11 was Veterans Day, a holiday.) In support whereof, the following is shown:

No party will be prejudiced by the granting Zimsky leave to file his Comments one business day late. Zimsky's Comments are only two and one-half pages in length and address three important issues: (1) female and minority bidding preferences for aliens applying for Private Radio licenses; (2) whether, pursuant to basic principles of equity, the RSA cellular markets in which licenses have been

¹ Zimsky's Comments are attached hereto as Exhibit 1. The Comments are also being filed herewith.

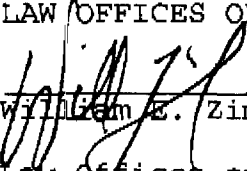
revoked due to participation of the licensees in the so-called Risk Sharing scheme should be subject to re-lotteries instead of auctions; and (3) whether fees for processing applications can be assessed against applicants whose applications will not be processed, i.e., auction losers.

Because Zimsky raises important public interest considerations in a succinct manner, his request for leave to file one business day late should be granted.

RESPECTFULLY SUBMITTED,

LAW OFFICES OF WILLIAM E. ZIMSKY

By:


William E. Zimsky, Esq.

Law Offices of William E. Zimsky
P.O. Box 3005
Durango, CO 81302
(303) 385-5107

November 12, 1993

EXHIBIT ONE

COMMENTS

Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of:

Implementation of Section 309(j)
of the Communications Act
Competitive Bidding

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PP Docket 93-253

TO: The Commission

COMMENTS

The Law Offices of William E. Zimsky hereby respectfully submits its Comments in response to the Notice of Proposed Rule Making, FCC 93-455, released October 12, 1993¹:

1) FEMALE AND MINORITY ALIENS SHOULD NOT RECEIVE ANY PREFERENCES IN BIDDING FOR FCC LICENSES

Aliens may own licenses for certain Private Radio services. However, it would be unconscionable for the U.S. government to give them any preferences over U.S. citizens in the bidding process for those licenses. What possible justification is there for giving a citizen of Spain a preference in bidding for an FCC license over a white male U.S. citizen? Absolutely none. Should Fidel Castro and General Mohammed Farrah Aidid have a preference over a white male U.S. citizen? I think not. (Minority and female

¹ These Comments are being filed one business day late. A Motion for Leave to File Comments One Day Late is being filed herewith. If that Motion is not granted, Zimsky requests that these Comments be considered as informal comments.

preferences have been awarded to aliens in comparative hearings for broadcast licenses.)

**II) THE RSA CELLULAR MARKETS IN WHICH PARTICIPANTS
IN THE RISK SHARING SCHEME RECEIVED LICENSES SHOULD
BE SUBJECT TO RE-LOTTERIES AND NOT TO AN AUCTION**

In the Risk Sharing case, CC Docket 91-142, the Administrative Law Judge revoked the licenses issued to participants in the Risk Sharing scam. Initial Decision, FCC 92D-64, released December 22, 1993. If the licensees had revealed to the FCC that they were participants in the Risk Sharing scam after they were selected as lottery winners they would not have received their licenses in the first place. Id. Therefore, basic equitable principles demand that the applicants who filed applications with the FCC for the RSA cellular markets in which the licenses of the Risk Sharers have been revoked be given the opportunity to participate in a fair lottery.

**III) APPLICATION FEES CAN ONLY BE ASSESSED
AGAINST THE SUCCESSFUL BIDDER**

The NPRM indicates that the FCC will require an applicant wishing to participate in an auction to submit an application fee with its application. NPRM at ¶¶ 96-101. However, the FCC will only process the long form application

of the auction winner. Id. Thus, the FCC is proposing to impose a fee to process applications which will not be processed, i.e., the auction losers. It is patently unreasonable to charge a user fee against someone who does not receive the service the cost of which the user fee was enacted to recoup. Cf. Lindy v. United States, 546 F.2d 371 (Cl. Ct. 1976). Such a scheme is unconstitutional because an unreasonable user fee effects a taking. Webb's Fabulous Pharmacies, Inc. v. Beckwith, 449 U.S. 155 (1980).

RESPECTFULLY SUBMITTED,

LAW OFFICES OF WILLIAM E. ZIMSKY

By: 

William E. Zimsky, Esq.

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